

UNAPPROVED AND SUBJECT TO CHANGE
CALIFORNIA FAIR POLITICAL PRACTICES COMMISSION
MINUTES OF THE MEETING, Public Session

July 11, 2002

Call to order: Chairman Karen Getman called the monthly meeting of the Fair Political Practices Commission (FPPC) to order at 9:50 a.m., at 428 J Street, Eighth Floor, Sacramento, California. In addition to Chairman Getman, Commissioners Sheridan Downey, Thomas Knox, and Gordana Swanson were present.

Chairman Getman announced that the meeting marked the first telephone broadcast of the FPPC meetings, and asked for feedback from the public regarding the telephone broadcast. She noted that staff is researching making it a web-based broadcast.

Item #1. Approval of the Minutes of the June 7, 2002 Commission Meeting.

The minutes of the June 7, 2002 Commission meeting were distributed to the Commission and made available to the public.

Commissioner Swanson moved that the minutes be approved.

Commissioner Downey seconded the motion.

There being no objection the minutes were approved.

Item #2. Public Comment.

There was no public comment.

Item #15. Legislative Report.

Chairman Getman thanked Assemblyman Florez for his letter received by the Commission on July 10, 2002.

Executive Director Mark Krausse explained that AB 13 was introduced by Assemblyman Florez, having grown out of the Oracle inquiry. Mr. Krausse noted that the only major issue raised in the staff analysis was the broad scope of the bill.

Assemblyman Florez stated that he would like to work with FPPC staff, and hoped to get the Commission's support on the bill. He believed that the bill would close a loophole in the laws and regulations that govern lobbying. He became aware of the loophole during the recent legislative hearings on the computer software contract between the state of California and Oracle Corporation.

Assemblyman Florez explained that vendors seek contracts to sell goods and services to the state. The vendors can "wine and dine" state officials to influence the decisions without having to comply with any lobbying laws and regulations. They can spend unlimited amounts of money on gifts and campaign contributions. The decisions affect hundreds of millions of dollars of taxpayer money, and often have a much greater impact on people's lives than any bill. Those decisions should be subject to other laws that govern lobbying. He intended to apply the current statutory and regulatory structure to vendors, in-house salespeople and outside consultants who attempt to influence state agencies. AB 13 expands the PRA definition of "administrative action" to include those contractual decisions. He noted that it would require more reporting, but believed that they were needed, especially since use of these contracts with the state has grown enormously over the last four years.

Chairman Getman stated that she supported covering lobbying on contracts. She agreed that there was a loophole in the statute, but not the regulations. She did not agree that salespersons should necessarily be included because, if the statute is broad, a legal challenge could be successful. She urged some restraint, suggesting that the bill concentrate on the most egregious lobbying area, such as the making of a contract, in order to tailor the statute in a way that would make it survive a legal challenge.

Assemblyman Florez agreed, and offered to work with staff to make sure that the bill addresses the Chairman's concerns.

Commissioner Knox explained that his law firm has discussed their background with a state agency, prior to being retained by the state agency, as part of a contracting process. He asked whether AB 13 would require that the firm register as lobbyists prior to those preliminary discussions.

Assemblyman Florez responded that he did not believe that AB 13 would require that the firm register as lobbyists prior to those discussions. In fact, they did not intend to craft the bill so broadly as to include the "request for qualifications process."

Mr. Krausse explained that it would probably be excluded under the requirement that a lobbyist spend 1/3 of his or her time lobbying.

Chairman Getman explained that Senator Johnson had encouraged the Commission to ask for any legislative changes they deemed necessary to make Proposition 34 more clear. She explained that the Commission has asked Senator Johnson to clarify whether Proposition 34 prohibits lobbyists from delivering campaign contributions to elected state officials. She suggested that it might be appropriate to get a sense of the legislative intent in that area while working on AB 13.

Assemblyman Florez noted that he would discuss it with Senator Johnson.

Mr. Krausse added that staff recommended to wait until AB 13 is amended to take a position on it.

There was no objection from the Commission to remain neutral on AB 13, but to work with Assemblyman Florez's office to develop further refinements to the statute.

In response to a question, Mr. Krausse explained that the Commission would have a chance to see the amended bill in early August to reconsider its position.

Commissioner Knox stated that he supported the concept of the refinements.

Assemblyman Florez stated that they understood that it was important to get the specific language to the Commission. He noted that it is an Assembly bill that is currently being considered in the Senate.

Chairman Getman stated that the Commission supported the concept of the bill.

The Commission took a short break at 10:01 a.m.

The Commission resumed business at 10:04 a.m.

Item #3. In re Hanko (O-02-88) -- Treatment of Bonus Payments Under Section 87103(c).

Staff Counsel Holly Armstrong distributed copies of the attachments to the June staff memorandum, which included Colin Coffey's original request for advice on behalf of Director Hanko, the *Coffey* advice letter, Roger Brown's request for reconsideration of the *Coffey* advice letter, and the *Brown*, *Larsen* and *Anaforian* advice letters.

Ms. Armstrong explained that Director Hanko marketed pharmaceutical products directly to Mills Peninsula Health Services (MPHS) hospital with the goal of increasing sales. Her incentive compensation is directly dependent upon the volume of products purchased by the hospitals and health care providers to whom she markets.

In response to a question, Ms. Armstrong explained that, based on the facts provided by Colin Coffey, staff determined that Director Hanko markets directly to MPHS. They included the fact that she worked at the MPHS hospital, and that she spoke to people employed at that hospital.

Commissioner Downey noted that Mr. Brown indicated that most of the people Director Hanko is in contact with at the hospital are not employees of the hospital.

Ms. Armstrong noted that even if most of the contacts are not with MPHS employees, some of the contacts are with MPHS employees. Therefore, she markets to MPHS. MPHS is the entity with whom Director Hanko's health care district is negotiating.

Ms. Armstrong explained that the staff memo gave further guidance on the issues the Commission requested to be addressed: attribution, salary versus bonus, reconsideration of what constitutes a commission, a public official's knowledge of the source of income, and direct contact versus no contact. Additionally, staff received several letters from the public regarding

Director Hanko's character and loyalty to the citizens of the community. Ms. Armstrong noted staff was not trying to obstruct Director Hanko from serving her community. She reminded the Commission that one of the district's disqualified directors could be allowed to participate under the "legally required participation" exception, noting that the district had been informed of the exception in advice letters.

Ms. Armstrong stated that staff's advice letters regarding this issue were consistent. The first advice letter advised that Director Hanko's incentive compensation was sufficiently similar to a commission and that MPHS was a source of income to her. The second advice letter confirmed those findings. Staff remained consistent, advising that incentive compensation is akin to a commission, even if it may not fit within the definition of "commission" in regulation 18703.3.

Ms. Armstrong noted that Mr. Coffey's letter indicated that Director Hanko could estimate what percentage of the incentive bonus could be attributed to purchases of Baxter products by MPHS. The estimate was about \$1,000. She tried to confirm those facts first with Mr. Brown, but he directed her to work with Mr. Coffey because Mr. Coffey was more familiar with the facts. Ms. Armstrong reconfirmed the facts with Mr. Coffey prior to the June meeting and it did not appear that the facts of the matter had changed.

Ms. Armstrong explained that the Commission must consider whether the relationship between Director Hanko and MPHS was an economic relationship. The incentive compensation was not exactly like a commission, and staff was recommending that the Commission adopt the concept of "incentive compensation," and that the Commission issue an opinion concluding that Director Hanko has a conflict of interest with respect to decisions concerning MPHS.

Ms. Armstrong suggested that the Commission consider the three factors outlined in the staff's recommendation on page 10 of the staff memo, with the following change:

- Factor (1) should be changed to read, "is employed to purposefully direct sales or marketing activity toward the customer." Staff believed that the employment relationship is a critical element because it is a source of income.

In response to a question, Assistant General Counsel John Wallace stated that if a sole proprietorship were involved a different analysis would apply.

Ms. Armstrong suggested that the Commission might instead consider letting the *Coffey* and *Brown* advice letters stand, and direct staff to pursue the issue through regulation next year.

Chairman Getman noted that Mr. Brown asserted that MPHS is not a customer of Baxter, but is, technically, a customer of the wholesaler.

Ms. Armstrong stated that staff disagreed with Mr. Brown on that issue. MPHS was purchasing Baxter products, even though they are purchased through a middle-man.

Commissioner Knox noted that the public official's knowledge of the source of income was not included as a factor to be considered in the incentive compensation analysis.

Ms. Armstrong responded that "purposefully directed activity" could only be done by knowing who that activity is directed toward.

Commissioner Knox agreed, but noted that it could be difficult to determine whether the \$500 threshold had been met. He questioned whether the knowledge of a \$500 attribution is a factor that should be considered.

Mr. Wallace noted that §87100 requires that a public official have knowledge of the conflict of interest or has reason to know about the conflict. When providing advice, the information is provided to staff, as was done in this matter. He suggested that enforcement staff would look to see whether the official acted reasonably when making an inquiry.

General Counsel Luisa Menchaca explained that staff looked for a "good faith" effort by public officials to determine facts relevant to the 8-step conflict of interest process. Staff does not give advice without facts. When determining step 3, the economic interest, or even the materiality, it is expected that a public official will, minimally, ask the source about the information. This issue arises in the materiality standards with regard to determining whether the threshold for an employer is met. In this matter, the official tried to obtain the information and found that the income was about \$1,000. Knowledge of the source is important, and public officials who cannot ascertain the amounts would not be given advice which confers immunity.

Commissioner Knox questioned whether the public official had a duty to find out the "secondary" sources of income for attribution purposes.

Chairman Getman responded that, if an official makes incentive compensation on the basis of purposefully directed sales or marketing activity, where there is direct contact between the public official and the purchaser, and the relationship results in an increase or decrease in the incentive compensation, then the public official would need to make that inquiry. She noted that it was a fairly narrow set of circumstances.

Commissioner Knox stated that it is a narrow set of circumstances if you accept the staff notion that there is a distinction between the incentive compensation and straight salary. If however, salary is also attributable indirectly to the customers of employees, then it becomes an enormous burden.

Chairman Getman responded that the standard would explicitly state that salary is not attributed.

Commissioner Knox asked whether a conflict would be deemed to exist had Ms. Hanko stated that she had not met the threshold because she used a different attribution method, based on the time the money is received.

Ms. Armstrong pointed out that Legal Division staff are not fact-finders, and that they would accept Ms. Hanko's facts and render advice based on those facts in most circumstances.

Ms. Menchaca stated that staff would go through to step 3 of the process, and determine that there is not an identifiable economic interest on the basis of the statute, and the analysis would end. It would result in no conflict because the \$500 threshold was not met based on the facts provided by the public official.

Chairman Getman noted that advice is given based on the facts provided, and that if the facts prove to be different, the advice would not be valid.

Commissioner Knox asked whether, if the opinion is adopted, Director Hanco would be required to report MPHS on her Form 700.

Ms. Armstrong responded that the Commission can require that it be reported if they choose to, but that it would require much more research and amending of regulations. It would not be required under the current regulations.

Ms. Menchaca advised that it not be reportable on the Form 700. This would be an interpretation of the disqualification provisions of the PRA. She noted that the Commission could address § 87207, which also uses the term, "source of income." The disclosure level in that provision is also \$500. Since all of the analysis is related to the disqualification provisions, staff believed that it was an issue that should be addressed separately.

Mr. Wallace noted that the information is currently being disclosed, but it is being disclosed as coming from one source, the employer. If the Commission chose to deal with the disclosure issues, it would result in a different designation of "source." In response to a question, he clarified that MPHS would not appear as a source on Director Hanco's Form 700 and is not required to be included on that form. Staff has dealt with opinions dealing with disqualification issues and not dealing with disclosure. The fact that this is being dealt with in the disqualification context does not pre-ordain what the decisions might be on the disclosure issues.

In response to a question, Mr. Wallace agreed that "source of income," is the same term in both bodies of law, and noted that there had been discussion about revisiting the issue through regulation. The scope of the *Hanco* opinion dealt with disqualification.

Chairman Getman stated that one of the most common disqualifying aspects is the ownership of a residence, which is not disclosable. There are a number of instances where there is disqualification but not disclosure. There are other instances where there is disclosure and no disqualification. The Commission has tried to address some of those issues through the Phase 2 project and through Commission sponsored legislation dealing with some of the aspects where there has been disclosure and no disqualification. She suggested that the Commission look at cases where there is disqualification but no disclosure next year. She noted that there are differences based on privacy concerns.

Commissioner Knox was concerned about using "source of income" on the form 700 in a manner that does not extend to second tier sources of income while using "source of income" for disqualification purposes as defined in the staff proposal would extend to second tier sources.

Chairman Getman agreed that it was not a simple issue, but thought it was worth looking at. It cannot be answered without a real analysis of whether the terms are always identically interpreted in the disclosure and disqualification aspects. They would not be interpreted identically if the Commission adopts the opinion, unless the Commission specifically stated that.

Roger Brown, representing Peninsula Health Care District, stated that the decision the Commission makes must create rules that are clear, consistent, understandable and legally sound. He believed that the staff analysis was much too subjective, ill defined, confusing and difficult to apply, and he believed that adopting the staff analysis would cause more problems than it would solve.

Mr. Brown stated that Director Hanko confirmed the facts related by Mr. Brown in his most recent letter. He understood that Director Hanko markets Baxter products directly to physicians. The physician prescribes the Baxter product if the physician believes it is the best product for the patient. MPHS has a pharmacy that supplies the Baxter product to the patient or physician, and then the pharmacy is resupplied from a warehouse. Director Hanko does not market to MPHS, their buyer, or their pharmacist because the products she markets are prescription products. Her contacts with physicians, who are not employees of MPHS, break the direct linkage, and he did not believe that attribution must be made.

Commissioner Downey read from the minutes of the June Commission meeting, noting that Ms. Hanko stated that she marketed with physicians and nurses, and that Ms. Hanko stated that she meets with buyers and pharmacy directors to discuss compliance with contracts. She also stated that her job included offering extra incentives to a facility to stay on contract.

Mr. Brown responded that there is no contract between Baxter and MPHS, and that there is no occasion for her to be administering or trying to support contracts because they do not exist.

Commissioner Downey noted that Mr. Brown indicated to him that Director Hanko markets to physicians and nurses, and questioned whether they were employees of MPHS.

Mr. Brown responded that the nurses are probably employees of MPHS, but the physicians are private doctors with hospital privileges at MPHS. He questioned how much of her marketing activity needs to be directly with someone who is an employee or officer of MPHS. The vast majority of the Baxter products purchased at MPHS are from prescription purchases, and the physicians order those prescriptions.

Commissioner Downey stated that the forest should not be lost for the trees, noting that she goes to an MPHS hospital to make her presentations to people who will induce MPHS to purchase Baxter products. He believed that it resulted in a pretty direct relationship.

Mr. Brown disagreed. A purposeful direct contact would be from an approach directly from the marketer to the customer. Attribution should be made to the physician, not the hospital, in this case. He asked the Commission to consider that the district must know how to apply this in the future. If "source of income" means something in a disqualification context, it would be easy to say that it means the same thing in a reporting context. The Commission could try to draw a

distinction, but he believed that a private attorney general action could be brought if disclosure is not made.

Mr. Brown summarized that the statute and regulation 18703.3 provide the proper answer. He believed that the Commission should use subdivision (a) of the regulation and decide that, except where there is a true commission as defined in the regulation, it is the actual direct payor who is the source of income and no one else. He believed that the *Coffey* and *Brown* advice letters do not properly interpret the existing law nor the prior advice letters upon which they were based. He urged that they be rejected. The current staff analysis is flawed because it relies upon conclusions of fact that are inaccurate and because it introduces new and undefined concepts that will raise more questions than they answer. He believed that, instead of eliminating clients of law firms that give their attorneys a bonus, it would include those clients as sources of income. He feared that there may be scores of others who may have conflict situations as a result of the staff recommendation. He was not sure how hard public officials would have to work to get the information necessary to make the attributions required by the staff analysis.

Mr. Brown noted that, in the *Anaforian* advice letter, staff made an assumption that resulted in the same amount of money being attributed to everyone that the person marketed to. He asked how to deal with people who simply do not know how to attribute the income.

Chairman Getman noted that Director Hanco was able to get the information and did, in fact, attribute the income.

Mr. Brown responded that it is important to define this so that they can advise people in the future.

Chairman Getman asked whether there was any reason to believe that Director Hanco would not be able to do this again.

Mr. Brown responded that he did not know, but would not assume anything. He asked how hard a public official must work to get that information, noting that Director Hanco had to work very hard to get the information.

Chairman Getman stated that the negotiations involved a \$50,000,000 contract, and that sometimes public officials do have to work hard to find out. Director Hanco did exactly the right thing by getting the information for two years, and suggested that she may have to do the same thing again as long as she serves on the board. Chairman Getman noted that it is a policy judgment made by the people of California.

Mr. Brown noted that it is within the authority of the Commission to tell her how hard she has to work. He asked that the Commission provide more direction in a manner that would let people know how hard they had to work to get the information, or, as in *Anaforian*, how to deal with people who do not have the attribution information.

Chairman Getman responded that the Commission should not say that the public official is immune from the law simply because the public official does not know.

Mr. Brown explained that Director Hanco does not know when disqualification might be triggered during the year under the staff analysis. Director Hanco receives periodic payments based on Baxter's formula. At the end of a calendar year Director Hanco will have received a certain amount of money, but Baxter will not make a final determination of the formula and the amounts until at least April of the following year. She still has not received word of what her final bonus was for 2001.

Commissioner Downey interjected that Director Hanco knows how much she received, and that is all the statute asks. It would be inappropriate not to attribute it to Baxter just because she might have to give some back later. She should just look at the last 12 months' bonuses to see how much she received.

Mr. Brown responded that, at the time of receipt, she will not know what to attribute to MPHS.

Chairman Getman asked whether it was reasonably foreseeable for her to believe that, since she received more than \$1,000 last year, and knows what marketing efforts she has made during the year, she should be able to determine whether it would be reasonably foreseeable to believe that she would meet the threshold.

Mr. Brown questioned whether "reasonable foreseeability" had to do with materiality. Determining whether it would be reasonably foreseeable that she would reach the threshold would be guesswork.

Ms. Menchaca stated that the "reasonably foreseeable" standard applied once an economic interest has been established. In this situation, whereby a public official has met the threshold for two years, the public official can assume that he or she will make that determination again. Ms. Menchaca noted that the public official could go to the employer and ask that they give the facts to her earlier.

Mr. Brown did not know whether Director Hanco had asked for the information. He was concerned that the direction seemed to be that if the public official received income from a source last year the public official must assume that the income will be received again the following year unless someone advises otherwise.

Mr. Wallace asserted that staff was saying that if that amount of income was received last year, the public official was on notice to make an inquiry. If she has not, then she may not be using due diligence, which is one of the underlying concepts of the PRA.

Mr. Brown responded that any public official must meet a threshold for a source of income before they can be disqualified. Since Baxter is always changing their formula for the incentives, Director Hanco will not know until long after she receives the bonus whether the amount of the bonus meets the threshold. He questioned whether Director Hanco may have already violated the PRA because she participated in decisions after receiving the bonus, even though she did not know how much of it should be attributed to MPHS. Conversely, he asked whether she would be disqualified only after doing the attribution analysis and discovering that

there was a \$500 source of income. He did not agree that she should have to assume that she would meet the threshold just because she met it the year before.

Chairman Getman explained that Director Hanco was disqualified in 2000 for receiving \$1,000 from MPHS. Director Hanco believed that there would be over \$1,000 in income from MPHS for 2001. She would be disqualified for 12 months following the receipt of the bonus, which would cover her while she works to analyze the 2002 income.

In response to a question, Mr. Brown confirmed that Director Hanco receives a payment each month, but noted that it is not final until after Baxter does the final calculation.

Chairman Getman stated that, since Director Hanco is receiving money every month, she needs to be determining what portion is from MPHS.

Mr. Brown responded that the information she would need to make that determination is not available from Baxter. Baxter engaged a third-party independent consulting firm to provide them with rough data which does not break down purchases by hospital. Director Hanco calculated the attribution amount by estimating.

Commissioner Downey stated that Baxter could ask the consulting firm to provide the information. There may be a secret formula, but he did not believe that it would be that hard to figure out.

Mr. Brown responded that there were no facts to support those assumptions. Baxter could not be forced to make the consultant do something different.

Mr. Brown compared the staff analysis and the *Anaforian* and *Larsen* advice letters. He noted that the *Larsen* advice letter involved the spouse of a public official who managed a plant working with agricultural products. In that letter, staff advised that the public official was disqualified because the spouse made a commission based on the total productivity. He made no direct contact with the customer. In the *Anaforian* case there was no knowledge of the source. If the Commission issues an opinion, it should address whether the *Larsen*, *Anaforian*, *Brown* and *Coffey* letters are still valid advice. He asked that the Commission put some reasonable limit on how many steps beyond the payor that the public official will have to look in the analysis. When the direct marketing activity is with the physician, the income goes from Baxter to the wholesaler, MPHS, physician and the patient. Mr. Brown asked that the Commission recognize the possibility that disqualifications in this area can be gamed. Somebody could begin making purchases from an independent third party that the public official is not aware of and find themselves disqualified.

Chairman Getman noted that if Director Hanco is disqualified, it would be because of Baxter purchases made through MPHS.

Mr. Brown clarified that he was concerned that someone may purchase Baxter products through someone that she may have had some direct contact with, but has no idea that they are buying the products in volume. If she were trying to get physicians to prescribe Baxter products, she has no

control over where the patient goes to buy the prescription. If MPHS closed its doors, the patients would go elsewhere to buy their prescriptions and Director Hanko's income would not change because it would be purchased within the same sales territory.

Chairman Getman responded that Director Hanko would then have no conflict with MPHS.

In response to a question from Commissioner Swanson, Mr. Brown stated that the board has been working to analyze the possibility of allowing a disqualified board member to participate under the "legally required" participation option. He did not know the current status of those discussions.

Chairman Getman suggested that the Commission discuss a standard that would consider whether a source of income can include incentive compensation under the circumstances in which (1) the person is employed to purposefully direct sales and marketing activity toward the customer; (2) there is direct contact between the official and the customer intended by the official to generate sales or business; and (3) there is a direct relationship between the purchasing activity of the customer and the amount of the incentive compensation received by the official. If the Commission were to adopt that standard, they would then have to decide whether Ms. Hanko met the standard.

Commissioner Downey was convinced that the issue was not that complicated. Ms. Hanko was a skilled, highly trained, knowledgeable member of a pharmaceutical sales force. She shares her knowledge with employees and independently contracted physicians at a local hospital operated by MPHS. She also sits on a board that will be dealing with matters having a very significant financial impact upon MPHS.

Commissioner Downey believed that the de facto customer of Baxter was MPHS because MPHS runs the pharmacy, places orders with the wholesaler, and buys and dispenses Baxter products. Ms. Hanko knows that her employer has an incentive compensation program that is tied to purchases made in a defined geographical area that includes MPHS. It is not hard for her to figure out that she knows MPHS and that there is a potential financial impact on her personal finances because she deals with them every day trying to promote her company's product. She knows that part of her pay for her efforts is due to the purchases by MPHS. He believed that it was irrelevant that she would be voting against MPHS. The question was simply whether she had an economic interest in the decisions that would be made by her board with respect to MPHS. He noted that she may be able to put aside her obvious conflict of interest, but it does not matter. He agreed with the staff analysis and opinion.

Commissioner Downey moved that the Commission accept the staff recommendation to issue an opinion.

Commissioner Swanson seconded the motion.

Commissioner Knox opposed the motion because he did not believe that Director Hanko had an economic interest in MPHS as the term is defined in regulation 18703.3(a). The income was not a commission under § 18703.3(b)(2). There is no meaningful distinction between whether she is

receiving incentive compensation or straight salary, and the problems staff is trying to guard against would be the same even if she did not get incentive income but received a straight salary. He disagreed with staff's characterization of the difference between salary and incentive income. He was troubled that "source of income" would be defined for one purpose under the disqualification statutes, and another purpose under the SEI statutes, which could result in the disqualification of a public official based on information that does not have to be reported on their SEI. He believed that there are some things that do not have to be guarded against by regulation, and that the voters will decide whether her activities should be considered inappropriate during the campaign.

Commissioners Downey, Swanson and Chairman Getman voted "aye". Commissioner Knox voted "nay". The motion carried by a vote of 3-1.

Chairman Getman directed staff to present a draft opinion at the August Commission meeting and encouraged Commissioner Knox to consider working with staff on a dissent opinion.

Item #6. Pre-notice Discussion of Regulations Defining Coordinated Expenditures; Repeal and Reenactment of Regulation 18225.7.

Senior Commission Counsel Larry Woodlock explained that Proposition 34's contribution limits have made it more important to distinguish payments made to or at the behest of a candidate from payments which are not made to or at the behest of a candidate. Currently, regulation 18225.7 describes two kinds of activities which constitute payments made at the behest of a candidate, and two activities which are not made at the behest of a candidate. Staff has written almost 100 advice letters since the regulation was adopted in 1995 to help clarify what is or is not a coordinated expenditure. It is not possible to specify every possible coordinated expenditure in the regulation, but staff believes that the regulation could be amended to cover more circumstances.

Mr. Woodlock explained the provisions of draft regulation 18225.7. Subdivision (a) would gather synonymous terms used throughout the Act and consider them as coordinated expenditures "made at the behest of" a candidate. Subdivision (b) states the current rule that expenditures "made at the behest of" a candidate are "contributions." Subdivision (c) specifies activities that constitute "coordinated expenditures." Subdivision (d) states a series of rebuttable presumptions. Subdivision (e) carries over safe-harbor provisions from the existing regulation 18225.7. Staff spent some time designing the proposed regulation. Staff is not completely satisfied with all of the proposed language, but asked the Commission whether they believe a new regulation is necessary and whether the proposed regulation is a suitable beginning.

Commissioner Downey stated that he believed a new regulation is needed.

Chairman Getman agreed and supported the proposed regulation's attempts to focus on conduct instead of intent, which would help define in an easily enforceable way, what is or is not coordination. This would provide clear lines for enforcement purposes.

Chairman Getman stated that the *Judy Davis* advice letter has provided the most explicit guidance from the Commission on what conduct constitutes coordination. She suggested that staff use the factors in that letter as a starting point for the regulation. She noted that staff used some of the factors in the *Davis* letter, but made substantive changes to those factors and she questioned why that was done.

Mr. Woodlock responded that the letter addresses specific facts. It contains some general language and addresses some fact patterns which recur, making it a useful letter, but not one that would address all situations. When developing the proposed regulation, Mr. Woodlock tried to ensure that the regulation would lead to the same results as the *Davis* letter, and was successful in most cases. The regulation will need more work before it will be satisfactory in order to address those cases where different results occurred.

In response to a question, Mr. Woodlock stated that case law has developed since the *Davis* letter was written, changing what may constitutionally be prescribed.

Mr. Woodlock stated that the regulation should treat more than the issues addressed in the *Davis* advice letter, which answered specific questions. Other advice letters cover issues not included in the *Davis* advice letter, and the regulation should include that advice. He believed that the regulation should be crafted with general rules stated in terms of conduct, and that it should be a one or two page regulation that would provide clear answers to most situations. It will not handle every situation because of the complexities of the conduct to be regulated, but staff hopes to eliminate the need for about half of the advice letters they currently write on these issues.

In response to a question, Mr. Woodlock stated that staff did not intend to substantively change the advice given in *Davis*.

Chairman Getman noted that the *Davis* letter emphasized a direct connection between a candidate and the expenditure. The draft proposal lost some of that directness. She explained that the regulation provided that there would be coordination if both the candidate and the committee have the same pollster, even if the pollster is not in any way connected to the expenditure on the communication. This would conflict with the *Davis* letter.

Mr. Woodlock noted that this rule is in the presumption area, and was addressed in subdivision (d) of the regulation. It would not mean that coordination existed in all cases, but would presume that coordination existed unless the respondent can show that there was not underlying coordination.

Chairman Getman responded that the presumption would have been the opposite under the *Davis* letter.

Mr. Woodlock agreed, but thought it troubling because the advice letter addressed hypothetical questions. It was difficult for staff to respond to a campaign consultant who recently left a campaign, then went to work for a media company where the duties of the job would include supporting that candidate. In that scenario, many people would suspect that the consultant was importing special knowledge and an agenda to the new job, and that the consultant may still be

acting as an agent for the candidate. The presumption would force the respondent to reveal facts that staff could not find out any other way.

Chairman Getman responded that the draft regulation may go too far in turning the presumption the other way. The *Davis* letter would have required looking at conduct that would have evidenced a connection to the expenditure. She noted that the *Davis* letter and Brennan Center proposal focused on simultaneous employment during the same election. Staff's standard would include the previous 12 months which she believed to be much too broad. If a committee retained the services of an attorney to do an argument over title and summary during the ballot pamphlet litigation period, and the same attorney was retained by a candidate to do campaign reporting, under the staff regulation there would be a presumption that any communications put out by the committee are controlled by the candidate. Chairman Getman believed it was too broad without a connection between the attorney and the expenditure.

Mr. Woodlock responded that the point of a presumption is to state a conclusion when the supporting facts are better known to the respondent. If the Commission believes it goes too far staff will change it.

Commissioner Knox echoed the Chairman's concerns, and asked staff how the presumption would be rebutted.

Mr. Woodlock responded that staff was shifting the burden of production. If Enforcement staff ascertains that the presumption exists, the respondent would have to provide a declaration stating facts that would refute the conclusion.

Chairman Getman did not agree that the respondent should have to provide the declaration unless there is evidence of conduct showing that the individual who is employed by both committees has participated in decisions regarding the expenditure. She suggested proposed subdivision (d)(2) be changed to include "the person making the expenditure has, within the same election cycle, retained the professional services of a person who is providing the candidate with non-ministerial campaign-related services, and that person is involved in decisions regarding the expenditure." This would incorporate the Brennan Center and *Davis* letter concepts of limiting it to the same election cycle and that evidence of conduct must be present to make a presumption that the person is working as the candidate's agent.

Mr. Woodlock responded that those changes could be made. He noted that he deliberately departed from election cycle language because it is not defined well in the Act.

Chairman Getman stated that "12 months" was not tied closely enough to both working on the election.

Mr. Woodlock stated that "election cycle" under Federal law is a period of time, and does not limit it to work specifically for an election.

Chairman Getman suggested that staff tie the language to working on the same election cycle, even though that particular phrase may not be used in the Act.

Mr. Woodlock agreed, but noted that it may be very difficult because it introduces a kind of subjectivity into the equation that may create proof problems.

Chairman Getman believed that it could be done with little difficulty. She suggested that subdivision (d)(4) was also too broad because replication of the communication is dealt with in whole or in part, whereas the *Davis* letter deals with dissemination of the candidate's communication for the candidate. If information is extracted from the communication and is used, it would not have been a coordinated expenditure under *Davis*. The Brennan Center proposal would have required that the communication be reproduced or disseminated in substantial part if not in its entirety.

Mr. Woodlock stated that he would be happy to work on those suggestions. He noted that proposed subdivision (d)(1) through (d)(5) were placed in descending order, and that he was not convinced that (d)(5) was a good idea, and he was not sure about (d)(4) either. He agreed that it would be better if (d)(4) was strengthened.

Chairman Getman suggested that "acting as the candidate's agent with respect to the expenditure at issue" be added to the "agent" language in the beginning of the proposed regulation.

Chairman Getman agreed that (d)(5) was too broad.

Mr. Woodlock explained that he included everything that he thought was plausible, in descending order, from the Brennan Center proposal.

Chairman Getman noted that the example cited in the Brennan Center proposal, page 2, did not seem to be "coordination," contrary to the Brennan Center's interpretation. She did not think it would have been coordination under the *Davis* letter.

Mr. Woodlock noted that the *Christian Coalition* decision would agree with the Chairman, and would characterize the example cited by the Chairman as the "insider information standard."

Chairman Getman suggested that subdivision (d)(5) did not necessarily need to be eliminated, but should be narrowed.

Mr. Woodlock responded that he agreed that (d)(5) was troublesome, and noted that if it is narrowed too much, little would be left. He was also concerned that proposed subdivisions (e)(1) and (e)(2), taken from the existing regulation, may also be too broad. Mr. Woodlock stated that the "request or suggestion" language used by the FEC is included in proposed subdivision (c) and he questioned the definition of "suggest." He agreed that staff needed to make sure that the clear rules they were trying to provide in the proposed regulation must be defensible in all cases.

Commissioner Swanson stated that the language, "or advisory position with the candidate" in proposed subdivision (d)(1) goes too far.

Mr. Woodlock explained that he envisioned someone who is talking to the candidate about strategy and tactics of the campaign, with or without compensation, in that language.

Chairman Getman stated that some of the other materials require that the staff person be compensated. She suggested that the language in (d)(2) be used to address Commissioner Swanson's concern. She agreed that staff should address issues of paid versus volunteer work.

Mr. Woodlock explained that subdivision (b) should be corrected to end with a comma, and have language added to the effect, "subject to any exceptions provided by Gov. Code § 82015 or regulation 18215." The statute and the regulation contain some exceptions to the term "contribution" when the candidate requests an expenditure.

Mr. Woodlock noted that § 82015 addresses volunteer personal services, but noted that he would be happy to make the change Chairman Getman suggested.

In response to a question, Mr. Woodlock stated that, if the Commission wanted to pursue the proposed regulation and provided staff with guidelines for the regulation, he would develop the regulation accordingly and bring it back for adoption in September.

Chairman Getman suggested that staff draft another proposal and hold an Interested Persons meeting based on that draft. She noted that the previous IP meeting was well attended and very lively.

Mr. Woodlock agreed. He stated that everyone seems to want a better regulation, but noted that coordinated expenditures will be difficult to regulate because it will be difficult to detect agreements. It will not be possible to specify all types of agreements in a regulation. He sensed that those members of the public who want to play by the rules would like clear guidelines so that they will know what they can or cannot do. The general public, however, may not believe that the regulation will have a deterrent effect on those persons who do not want to play by the rules.

Ms. Menchaca stated that staff would need to do the IP meeting during the first week of August in order to get the regulation back to the Commission in September.

In response to a question, Ms. Menchaca stated that this was the first prenotice discussion of the proposed regulation, and the Commission could adopt the regulation in September if it chose to, or it could have a second prenotice meeting. If staff learns that members of the public have significant revisions, they would probably suggest a second prenotice meeting.

Commissioner Knox noted that the regulation should be adopted sooner because of the upcoming election.

Ms. Menchaca suggested that staff could notice the version of the regulation before the IP meeting, and the Commission could then adopt the regulation in September. If the IP meeting

resulted in significant change, staff would recommend adoption of an emergency regulation. It may be confusing to the public, but explanations could be posted on the web site.

Commissioner Knox suggested that the formal adoption should be done in August, noting that campaigning will increase after Labor Day and that it would be good to have a regulation in place by then.

Ms. Menchaca responded that the Commission could do an emergency adoption in August, but that it might not give staff time to conduct an IP meeting.

Commissioner Swanson was concerned that the IP meeting could give important insight and questioned whether an August adoption would allow adequate time to consider the regulation.

Commissioner Downey agreed with Commissioner Swanson. He was hoping for more discussion through IP meetings. He supported a September adoption of a regulation.

Ms. Menchaca noted that it would be difficult for staff to put a memo together in time for the August meeting.

Commissioner Knox withdrew his suggestion.

Chairman Getman summarized that there should be an IP meeting in August and emergency adoption of a regulation in September.

In response to a question, Mr. Woodlock stated that he would address the "advisory position" concern of Commissioner Swanson.

Item #4. Proposition 34 Regulations: Advertising Disclosure -- Adoption of Proposed Regulations 18450, 18450.1 and 18450.2.

Commission Counsel Scott Tocher explained that the Commission considered three regulations at its May 2002 meeting, dealing with the scope of this regulation, the definition of advertising, and the definition of cumulative contributions. The Commission asked staff to bring back two regulations unchanged and directed staff to pursue a legislative change to resolve a conflict between two of the statutes and narrowing the definition of "cumulative contributions." Mr. Tocher stated that staff is pursuing the legislative change but that it has not yet been accomplished.

Executive Director Mark Krausse reported that staff has approached two authors for the legislation. SB 584 was too far along in the process and the author did not want to amend it at this point. Assemblyman Papan did not want to include it in AB 3051, and Mr. Krausse noted that it may not have been the best bill to use. He was trying to select the right vehicle for the legislation, and suggested that it might be better to find a bill that will not be approved and rewrite it to address only this issue. He believed that there might be an 80% chance of success for that scenario. He suggested that the Commission may want to pursue a regulation since a legislative change could not be guaranteed.

Chairman Getman stated that the statute was not written in a manner that would allow a regulation.

Commissioner Knox agreed.

Commissioner Downey asked, if no legislative change was made, whether it was better to have no regulation.

Mr. Tocher stated that without a regulation, § 84503 would be broadly applied to any committee. The cumulative statute is clear. Staff believed that a regulation might be subject to challenge.

Chairman Getman suggested that some groups who would be subject to ludicrous disclosures under the statute might be willing to help get a legislative change.

Mr. Tocher explained that proposed regulation 18450.1 defines "advertisement." The latest version incorporates thresholds of 200 and changed subdivision (b)(3) to provide that Web-based and Internet-based communications would be set aside for now, until the Internet Commission presents recommendations. He noted that staff recently found a bill that would extend the Internet Commission another 12 months.

Mr. Tocher stated that the regulation was ready for adoption.

Chairman Getman suggested that line 5 be changed to read, "Any televised or radio broadcast," indicating that it is intended to encompass all variations of television or radio programming. She explained that satellite radio might not be included under the current definition, and suggested that, without the change, technology might outpace the language of the regulation.

Mr. Tocher responded that the cable television clarification was made because it was not always considered a broadcast because it is not received through an antennae.

After further discussion, the Commission agreed to change the language to, "Programming received by a television or radio."

Commissioner Swanson moved that the proposed regulation be adopted.

Commissioner Knox seconded the motion.

Commissioners Downey, Knox, Swanson and Chairman Getman voted "aye." The motion carried by a unanimous vote.

Mr. Tocher reported that staff would update the Commission regarding the progress of legislation.

Items #8, #9, #10, #11, #12, and #13.

Without objection, the Commission approved the following items on the consent calendar:

- Item #8.** *In the Matter of Citizens for an Educated America, No on 227 and David Gould, FPPC No. 99/632.* (4 counts).
- Item #9.** *In the Matter of Al Snook and Snook for Mayor, Friends of Al “Big Al,” FPPC No. 98/618.* (3 counts).
- Item #10.** *In the Matter of David G. Kelley, Kelley Assembly Campaign Committee 2002, and James W. Trimble, FPPC No. 02/082.* (1 count.)
- Item #11.** **Failure to Timely File Late Contribution Reports - Proactive Program. Staff: Chief Investigator Alan Herndon, Investigator III Jon Wroten.**
- a.** *In the Matter of Steve Beneto Jr. and Beneto, Inc., FPPC No. 2002-121.* (1 count.)
 - b.** *In the Matter of Hanson Aggregates Mid-Pacific, FPPC No. 2002-220.* (4 counts.)
 - c.** *In the Matter of Expresstouch Inc., FPPC No. 2002-325.* (1 count.)
 - d.** *In the Matter of Vali Cooper & Associates, Inc., FPPC No. 2002-326.* (1 count.)
- Item #12.** *In the Matter of David Ianacone, FPPC No. 01/0732.* (2 counts.)
- Item #13.** *In the Matter of Patricia Moran, FPPC No. 01/274.* (1 count.)

The Commission adjourned to closed session at 12:00 p.m.

The Commission reconvened the public session at 1:28 p.m.

Item #5. Proposition 34 Regulations: Reporting Payments for Communications that Clearly Identify a State Candidate under Section 85310 -- Pre-notice Discussion of Amendment to Regulation 18539.2.

Commission Counsel Hyla Wagner explained that the Form E-530 was one of the first forms designed only in an electronic format. The Secretary of State requested that the Commission amend the regulation to require the type of communication be reported on the E-530. She believed that it would be within the scope of the statute to include the information on the E-530.

There being no objection, the amendment was approved by the Commission for pre-notice discussion.

Item #7. Project Proposals – Conflict of Interest Codes and Statements of Economic Interest.

Ms. Menchaca stated that the staff memorandum provided a status report on the five projects related to the Conflict of Interest Code Project and the Statement of Economic Interest Project. Each division has taken a lead role with respect to particular projects and staff from various divisions were working on each of the projects. The memorandum summarized staff's work and discussed preliminary recommendations that staff will bring to the Commission in October and November 2002.

Ms. Menchaca noted that staff has not yet been able to move forward on the investment definition project due to its complexity. She anticipated that staff would present that project later in the year.

Commissioner Swanson pointed out that local government agencies have a different level of influence in decision-making than, for instance, the FPPC. Local government officials who decide whether a form is correct are often employed by the people whose forms they must review. She suggested that staff consider creating a mechanism that would allow recourse for a local official's decisions.

Technical Assistance Division Chief responded that city clerks have expressed the same concern in the past.

Commissioner Swanson noted that the city clerks and county local officials are in a most difficult position.

Chairman Getman suggested that the survey, which would discern how quickly agencies are making filing requirement determinations, be postponed because a bill is pending which would change the filing requirement from 30 days after being hired to 10 days after being hired for state employees. Since the bill could change the information gleaned from the survey it would be better to wait to survey state employees. She noted that local agencies alone could be surveyed.

Item #14. Fair Political Practices Commission v. Stephen Bing, FPPC No. 02/098.

There was no discussion on this item.

Item #15. Legislative Report

SB 2095

Mr. Krausse distributed copies of SB 2095 as amended on June 28, 2002. He explained that the bill would require that independent expenditures be linked somewhere on the SOS website, allowing an individual to see all independent expenditures. The SOS requested the amendment, dealing with the Legislature's intent that the independent expenditure reports include the district number and, if appropriate, the ballot number of the ballot measure that is at issue in the independent expenditure. He noted that the PRA already requires that.

Mr. Krausse stated that the SOS has told FPPC staff that people are not always completing that information on the form. Because of that non-compliance, the SOS believed that it was important to include the legislative intent in the amendment. He noted that "legislative intent" is not always considered a requirement, and argued that it could undermine the existing statutory requirement. He suggested that the Commission could oppose the bill unless it is amended, or it could take a position of "oppose unless amended/support if amended."

In response to a question, Mr. Krausse confirmed that the SOS is supposed to notify individuals who have not completed the information on the form that their filing must be corrected. If they are not corrected, the SOS should refer the case to the FPPC for enforcement purposes.

Technical Assistance Division Chief Carla Wardlow stated that filers do not look at the statute. She suggested to Caren Daniels-Meade, from the SOS, that it would be better to request that the filer send amended information or face a potential enforcement referral rather than duplicate the requirement in the statute. Ms. Daniels-Meade did not disagree, but did not indicate that they were intending to request amendments.

Chairman Getman moved that the Commission oppose unless amended/support if amended SB 2095.

Commissioner Knox discussed his concern that the position would cause Senator Johnson to further perceive the FPPC as a "toothless watchdog" and questioned the harm of supporting the bill.

Mr. Krausse stated that the language might allow an argument that the provision is no longer a requirement, since it is just the intent of the Legislature.

Commissioner Knox stated that finding the intent of the Legislature recapitulated in the statute after reading the unambiguous language of the first requirement would not necessarily undermine the clear language of the statute.

Mr. Krausse noted that there is a history by some filing officers to expect the Legislature to amend the statute rather than requesting an amended form from the public official. He noted that it is the responsibility of the SOS to review the forms.

Commissioner Knox questioned whether the legislation should be opposed because it may appear as though the SOS, Senator Johnson and the FPPC have adversarial positions on the issue, and the FPPC could end up looking like they are opposing a strict enforcement of the law.

Mr. Krausse urged the Commission to, at the minimum, take a neutral position on the bill.

In response to a question, Mr. Krausse stated that it is not common practice to support one provision of a bill while opposing another. Mr. Krausse stated that the floor would list the Commission in support, in opposition, or not at all.

Chairman Getman noted that the Commission was able to support some provisions and not others of SB 34. She understood that the Commission would be listed as being in support of the bill.

Chairman Getman reported that Senator Johnson requested a meeting with the Chairman. That meeting has been postponed.

Commissioner Knox stated that the Commission should write a letter stating that it supports subdivision (a) and is not opposed to subdivision (b) but believes that it is redundant and that, because it is redundant, it could be interpreted by some to weaken other provisions which the FPPC supports. He suggested that the committee staff would have to decide whether it is an oppose or support position. The Commission's position would not then be taken out of context.

Mr. Krausse reported that the bill is currently in the Assembly Appropriations Committee and can be amended. Commission staff would still have the opportunity to work with the author's staff on the bill.

Commissioner Swanson suggested that the Commission could formally request that FPPC staff and the author's staff work together to make the changes.

Commissioner Knox suggested that the letter he proposed incorporate Commissioner Swanson's recommendation.

Commissioner Knox suggested that the motion be amended to incorporate the series of recommendations just discussed.

There being no objection, the motion passed.

In response to a concern expressed by Commissioner Swanson that the committee should be made to know that the Commission no longer has a support position on the bill, Commissioner Knox responded that the letter will make it clear.

Commissioner Swanson understood the need to be politically sensitive, but did not want the Commission's partial support to look like they are in agreement with the bill. She believed that the Commission should not keep its previous support position.

Commissioner Knox stated that the letter would state that it would support part of the bill but not support another part of the bill.

Commissioner Swanson responded that it is not usually done that way.

Mr. Krausse suggested that the Commission could support the bill if amended to resolve the issue.

Commissioner Knox did not regard it as a terrible thing if the "legislative intent" provision passed. He did not believe it would undermine the otherwise unambiguous language in another provision.

Commissioner Downey agreed with Commissioner Knox, noting that the proposed letter should take care of any concerns.

Chairman Getman suggested that a letter be sent stating that the Commission would like to continue to support the legislation but it has concerns about the language because there is an existing statutory requirement for the proposed requirement and it is already on the forms. The letter should state that the paragraph is, at best, superfluous and, at worst, potentially harmful. The letter could propose that the Commission discuss with the legislative staff whether it would be appropriate to take the paragraph out. In that way it would take no position.

There was no objection from the Commission.

Mr. Krausse pointed out that it would leave the Commission's position as support unless other action is taken. He reported that the Appropriations Committee would likely hear the bill after August 5, 2002.

AB 3051 (Papan)

Mr. Krausse reported that the Commission currently has a neutral position on this bill. The Commission requested that Assemblymember Papan take amendments to remove staff concerns about a potential constitutional challenge. The provision would require that, in independent expenditure disclosures, the amount spent on advertisements for television and radio be disclosed. The Commission asked the Assemblymember to change that and other provisions in order to make it less susceptible to a constitutional challenge. The Assemblymember accepted most of the amendments but left in that one provision. The Commission also requested that the bill include the cumulative contribution language, but that was not included. Mr. Krausse recommended that the Commission remain neutral on the bill.

There was no objection from the Commission to keeping a neutral position on AB 3051.

Item #16. Executive Director's Report.

Chairman Getman pointed out that the Executive Director's Report will be including Findings of Probable Cause beginning in August, 2002. She explained that the regulations require that they be made public. They used to be made public through press releases, but that practice stopped some time ago. Enforcement Chief Steve Russo suggested that it be included in the Executive Director's report with the appropriate disclaimer language required by the regulation that a finding of probable cause is in no way an assessment of guilt or innocence.

Commissioner Swanson encouraged the Commission to not proceed with translating forms into other languages. She explained that, in order to become a citizen she was required to speak English. She saw no reason to translate the forms into other languages.

Mr. Krausse explained that the background for the issue is provided in his memo and that he suggests that it be discussed later in the summer or fall. He assured Commissioner Swanson that forms would not be printed in any additional languages until the Commission discussed the issue.

Commissioner Knox pointed out that translations can give divergent or ambiguous instructions. A citizen completing the form in another language might complete it differently had the person read the English instructions and completed an English form. He questioned how Enforcement would handle that type of problem.

Mr. Krausse responded that the Commission has not had forms in other languages in the past. Staff chose a vendor, Transcend, because of their experience translating ballot materials for the SOS.

Chairman Getman noted that the form will be developed with both English and Spanish translations, side-by-side, so that any questions about what was meant will be readily available in the English equivalent.

Commissioner Swanson noted that she would have opposed the idea of translating forms had it been presented to the Commission. She noted that staff will have to interpret the translations. A candidate may want to use another language. English is the official language, and bringing in additional languages is unnecessary. She agreed that a limited English speaking voter should have access to materials that would help the voter better understand the ballot. However, a candidate or elected official must know how to speak, read and write English in the laws of the state. Lesser expectations make no sense. She was against providing translated forms for candidates and public officials.

Chairman Getman clarified that the Form 700 was filled out by more than just candidates. She noted that a person does not need to be a citizen in order to serve on a government Commission, which would require completion of the Form 700.

Mr. Krausse pointed out that employees of government entities complete the Form 700.

Chairman Getman stated that it could not be published without the Commission's approval, and proposed that the policy discussion take place in connection with the approval of the next revision of the Form 700.

Commissioner Swanson was concerned that staff was looking into other translations too.

Mr. Krausse noted that the SOS does that, but that staff did not currently have any requests for any other languages. He agreed with the Chairman's suggested approach. The vendor will provide the Commission with a draft English/Spanish Form 700 and the Commission will vote to decide whether to publish the form in that format.

Item #17. Litigation Report

The litigation report was taken under advisement.

The Commission adjourned to closed session at 2:00 p.m.

The public session reconvened at 2:51 p.m.

Chairman Getman announced that the Commission completed its closed session and adjourned the meeting at 2:51 p.m.

Dated: August 9, 2002

Respectfully submitted,

Sandra A. Johnson
Executive Secretary

Approved by:

Chairman Getman